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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1954

No. 639

MATSON NAVIGATION COMPANY,
a corporation,
Petitioner,

vs.

HENRY C. LAWLER,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF FOR RESPONDENT IN OPPOSITION AND ANSWER TO AMICUS CURIAE BRIEF ON BEHALF OF PACIFIC AMERICAN STEAMSHIP ASSOCIATION.

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BRIEF FOR RESPONDENT IN OPPOSITION.

OPINIONS BELOW.

The opinion of the Court of Appeals (R. 52) is reported in 217 Fed. 2d 645. The opinion of the District Court (R. 11) is reported in 108 Fed. Supp. 946.

Both opinions are printed in an appendix to the petition for writ of certiorari herein.

JURISDICTION.

The judgment was made and entered December 8, 1954. The jurisdiction of this Court is invoked under 28 USC §1254(1).

QUESTION PRESENTED.

Is a seaman entitled to maintenance when injured while under ship's articles on authorized shore leave in the port where he maintains his legal residence?

STATEMENT OF THE CASE.

Respondent adopts petitioner's "Statement of the Case" except as to the last sentence thereof reading as follows: "The ship could not have called him for duty before 9:30 a.m. the next day because he could not have been found." This statement is not correct. Respondent was under ship's articles at the time he was hurt. (R. 15.) He was subject to the call of the ship under the terms of such articles, and he could have been recalled to the ship at any time had an emergency arisen requiring his presence aboard the ship. There is nothing in the record to support the statement that respondent could not have been located prior to the time he was due to return to the ship at 9:30 a.m. on May 12, 1952.

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The following additional facts should be noted. At the time of Lawler's accident the SS LURLINE was and is engaged in a continuous run between the coast of California, Honolulu, and return. One voyage starts at San Francisco and terminates at Wilmington, California, by way of Honolulu. The next voyage commences at Wilmington and ends at San Francisco, by way of Honolulu. Stops are made at each of the three ports just long enough to disembark passengers and take on supplies and new passengers for the next leg of the voyage. It is a continuous operation. (R. 43.) Under such a schedule, it is the practice and to the company's advantage (it saves considerable time in port), for the crew to sign articles for the next voyage while the ship is at sea and just about to complete the current voyage. (R. 34.) The commencement time of the new articles is the same as the termination time of the old. There is no gap in between. (R. 46.)

PETITIONER'S CONTENTION.

Petitioner must and does concede that if Lawler's accident had occurred under the same circumstances but in a port other than the port of his legal residence, there would be no question as to his right to maintenance. (*Aguilar v. Standard Oil Co.,* 318 U.S. 724; *Warren v. United States,* 340 U.S. 543; *Farrell v. United States,* 336 U.S. 511.) Petitioner contends, however, that in this case the seaman is not entitled to maintenance because he was hurt in the port where

he maintains his legal residence. Neither existing case law nor logic supports petitioner's contention in this regard.

ARGUMENT.

For many centuries admiralty law has recognized the right of a seaman to maintenance and cure if he falls sick or sustains injury in the service of a vessel, and without wilful misconduct on his part. The ancient remedy anticipated by at least a thousand years our modern workmen's compensation laws which apply to shoreside workers but not to seamen. Seamen must look to maintenance as their sole means of support in case of illness or injury, except where the illness or injury may be caused by negligence or unseaworthiness of the vessel, in which case they may claim damages from the owner. It is well settled that the right to maintenance is not restricted to those injuries or illnesses caused by the employment. (*Calmar SS Corp. v. Taylor,* 303 U.S. 525.) The right to maintenance has been extended to injuries sustained ashore while the seaman is on authorized shore leave. (*Aquilar v. Standard Oil Co.,* supra; *Warren v. U. S.,* supra; *Farrell v. U. S.,* supra.)

Petitioner concedes all this, but contends that the "shore leave" cases should be restricted to injuries sustained in ports other than the port of the seaman's residence. There is no logical reason for such a distinction and the cases do not support the position taken by petitioner. It was expressly rejected many

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years ago by Justice Story in *Reed v. Canfield,* Fed. Cas. No. 11641. Discussing the seaman's right to maintenance in that case, Justice Story had this to say:

> "And I am wholly unable to perceive any principle, upon which a distinction can be maintained between a service in a foreign and a home port.
>
> It has been suggested, that a seaman at home cannot be entitled to any claim against the owners of the ship for injuries received on the ship's service, any more than a mechanic or manufacturer at home for like injuries in the service of his employer. If the maritime law were the same in all respects with the common law, and if the rights and duties of seamen were measured in the same manner, as those of mechanics and manufacturers at home, doubtless the cases would furnish a strong analogy. But the truth is, that the maritime law furnishes entirely different doctrines upon this, as well as many other subjects, from the common law. Seamen are in some sort coadventurers upon the voyage; and lose their wages upon casualties, which do not affect artisans at home. They share the fate of the ship in cases of shipwreck and capture. They are liable to different rules of discipline and sufferings from landsmen. The policy of the maritime law, for great, and wise, and benevolent purposes, has built up peculiar rights, privileges, duties and liabilities in the sea service, which do not belong to home pursuits." (1948 A.M.C. 764.)

While the seaman involved in the *Reed* case was directly engaged in performing services for his em-

ployer at the time he was hurt, Justice Story did not place any particular emphasis on this fact in laying down the general principles set forth above.

Smith v. United States (C.C.A. 3), 167 Fed. 2d 550, involved a seaman who was injured in his home port while on authorized shore leave and not performing any service for the ship. In that case the seaman had signed articles on February 16, 1944, for service aboard the SS ROBERT JORDAN in his home port. On February 19, 1944, the seaman went ashore, went to his home and then went to a friend's house where he spent the night. On the following morning as he was leaving his friend's home he fell on some uneven ground in the driveway and injured his ankle. At page 762 the Court stated as follows:

> "*Argument is made that relief should be denied because libellant was not actually on a foreign voyage but in the home port of the vessel, was not engaged in the ship's business, and, although on shore leave, was not within the immediate vicinity of the ship at the time of his injury. None of these matters, in our opinion, is ground for denying relief.* (Emphasis added.)
>
> "The liability of the ship for maintenance, cure and wages of sick or disabled seamen is well established in the admiralty law. It is based upon entirely different doctrines from those relating to the liability of the master at common law or the employee under workmen's compensation statutes. Its basis was carefully explained more than a century ago by Mr. Justice Story in *Harden v. Gordon,* Fed. Cas. No. 6,047, and *Reed v. Canfield,* Fed. Cas. No. 11,641. Some of the

lower federal courts imported into the application of the admiralty doctrine principles borrowed from common law or workmen's compensation cases, but the Supreme Court repudiated these holdings in the recent case of *Aguilar v. Standard Oil Co.,* 318 U.S. 724, 733, 1943 A.M.C. 451, which reaffirmed the ancient doctrine of the admiralty law and held that the liability for maintenance and cure on account of sickness or injury in the service of the vessel, and not due to misconduct, extended to injuries received by the seamen while on shore leave."

* * * * * * *

In *Hunt v. Trawler Brighton, Inc.* (D.C. Mass.) 1952 A.M.C. 335, a seaman had returned to his home port from a fishing trip on the TRAWLER BRIGHTON. The evidence showed that it was customary for fishing vessels such as the BRIGHTON to lay over in the home port for a period of forty-eight hours before again putting out to sea. During this forty-eight hour period the seaman went ashore, first paying a visit to his aunt, and then in the late afternoon going to his own room. While leaving his home, intending to go to a restaurant for a meal, the seaman fell and broke his leg.

The Court held that at the time of his injury the seaman was a member of the crew of the BRIGHTON, even though at the time of injury he was on shore leave in his home port engaged in his own pursuits. The Court had this to say at page 337:

"Respondent argues that libellant, while he was on shore leave in his home port, going about his

> own affairs and not actively engaged in any activity connected with his ship, cannot be considered as having been in the service of the ship. This contention must be rejected. The right to maintenance and cure is not determined by what the seaman is doing when he receives his injury. It is only required that he be in the service of the ship in the sense of being generally answerable to the call of duty. * * * A seaman on shore leave is still in the service of his ship. *Aguilar v. Standard Oil Co.,* 318 U.S. 724, 733, 1943 A.M.C. 451. It is true that the *Aguilar case* was confined to its own facts and left open the question of whether all activities on shore leave were included, but this question appears to have been settled in *Warren v. United States,* 340 U.S. 523, 1951 A.M.C. 416, where maintenance was allowed to a seaman injured at a dance hall where he had gone purely for his personal diversion. This right of the seaman is not limited, as respondent argues, to the case of injuries which occur while on shore leave in foreign ports, but extends also to the case where the injury is received in the seaman's home port. *Smith v. United States,* 1948 A.M.C. 761, 167 F. (2d) 550; *Reed v. Canfield* (supra)."

These decisions, are entirely logical and consistent with the historical concept of maintenance.

Petitioner argues that home port injuries sustained by seamen should only be compensable if the injuries are sustained while the seaman is directly engaged in performing services aboard the ship or for the ship, as in the *Reed* case. Petitioner overlooks the fact that

under the rule laid down by this Court in *Aguilar* and *Warren,* supra, a seaman is considered to be "in the service of the ship" even while on shore leave and engaged in purely personal pursuits. Although these cases involved injuries sustained while seamen were ashore in foreign ports, the rationale of the decisions would also grant a recovery where the accident occurs in the seaman's home port, provided, as in the case at bar, the seaman is injured while on authorized shore leave *and while under articles.*

The facts of the case at bar readily illustrate how illogical it would be to deny a recovery here because of the fortuitous circumstance that the injuries were sustained by respondent while ashore in the port of his legal residence. He left the SS LURLINE at San Francisco, California, for authorized shore leave of 24 hours' duration. He was under articles and, in case of an emergency and if he could be located, could have been recalled to the ship prior to the termination of his shore leave. His legal status while ashore at San Francisco was no different than his status while ashore at Los Angeles or Honolulu. His purpose in going ashore was the same in all of these ports, namely, to secure a 24 hour respite and a change from his confinement and labors aboard the ship. It was to the Company's benefit to place respondent and the other crew members under articles for the succeeding voyage prior to the arrival of the vessel at San Francisco. It was also to the Company's benefit for Lawler to obtain rest and recreation ashore in San Francisco prior to the commencement of a new voyage.

> "* * * Men cannot live for long cooped up aboard ship without substantial impairment of their efficiency, if not also serious danger to discipline. Relaxation beyond the confines of the ship is necessary if the work is to go on, more so that it may move smoothly. No master would take a crew to sea if he could not grant shore leave, and no crew would be taken if it could never obtain it. Even more for the seaman than for the landsman, therefore 'the superfluous is the necessary * * * to make life livable' and to get work done. In short, shore leave is an elemental necessity in the sailing of ships, a part of the business as old as the art, not merely a personal diversion."
>
> *Aguilar v. Standard Oil Co.* (supra, p. 734).

Why, then, should the company be permitted to avoid the payment of maintenance in this case?

Petitioner argues that not only must the seaman be injured while "in the service of the ship" but also while "subject to the call of duty," citing the *Farrell* case, supra. But the very point of the *Farrell*, *Aguilar* and *Warren* cases is that seamen while under articles and on authorized shore leave *are* subject to the call of duty, even though their superior officers may have difficulty in locating them for return to the ship prior to the termination of the authorized shore leave. Petitioner contends that the respondent was not subject to the call of duty because he probably could not have been located prior to the time he was required to report back to the ship. But this is true of all cases of shore leave. Seamen on authorized

shore leave are merely bound to return to the ship by a certain time. Where they go, or what they do during their shore leave, is not ordinarily determined or delineated by their superior officers, and in the ordinary situation the seamen ashore do not and are not obliged to keep the ship advised of their whereabouts.

What petitioner is really contending in this case is that *Aguilar, Warren* and the other modern cases have gone too far in the protection of seamen, and that we should turn back the clock and eliminate a good measure of such protection. Implicit in petitioner's argument is the wishful hope that this Court, by a reversal in this case, will instigate a trend back to the "good old days" when seamen were more at the mercy of shipowners and ships' officers.

RESPONDENT'S ANSWER TO AMICUS CURIAE BRIEF OF PACIFIC AMERICAN STEAMSHIP ASSOCIATION.

The *amicus curiae* brief of Pacific American Steamship Association is a curious one. The only case cited is *The Osceola* (1903), 189 U.S. 158, a landmark decision with which none of the parties can have any disagreement. Pacific American Steamship Association's entire position, and the only argument advanced in its brief in support of the granting of certiorari in this case, is that because American seamen have finally been able to throw off the semi-serfdom that was their lot a century or so ago, and have achieved fairly decent wages and working conditions, that their historic right to maintenance should be chipped away at, if not eliminated entirely.

Pacific American Steamship Association (hereinafter referred to as PASA) supports its argument in this respect with a number of misleading statistics and statements, all of which are entirely outside the record in this case.

For example, PASA states in its brief (p. 3) that the average monthly wage for West Coast seamen is now $553.13. PASA fails to point out that the base pay of the seaman here involved, at the time of his injury, was only $226.46 per month. (R. 8.) PASA compares the average monthly wages of seamen with the wages of workers ashore. But this is obviously not a fair comparison. The shoreside worker is free to spend at least one-half of his time at home

with his family, or in recreational and other pursuits of his own. On the other hand, a seaman has no time with his family, and his so-called "free time" is limited to the narrow confines of a ship at sea, except for occasional opportunities to go ashore for a few hours. Furthermore, if PASA had presented to this Court the average *yearly* earnings of West Coast seamen, we are quite sure that such *annual earnings* would be little if any higher than the annual earnings of shoreside workers, because of the intermittent nature of employment at sea, due to lack of jobs, ship layups for repairs, and the like.

In listing the benefits available to injured seamen, PASA also neglects to point out that the greatest single benefit available to shoreside workers, i.e. workmen's compensation, is not available to seamen.

As an extreme example, take the case of a seaman who loses his leg in an accident aboard ship, the accident not being caused by negligence or the unseaworthiness of the vessel. The injured seaman spends many months in a marine hospital, during which time he is entitled to no maintenance whatsoever. He is finally discharged from the marine hospital with an artificial leg and has reached the point where everything that can be done for him by way of medical treatment has been done. Under the law of maintenance this seaman will not be entitled to any maintenance whatsoever, for the reason that he has reached his maximum recovery and there is nothing further that medical treatment can do for him. (*Far-*

rell v. U. S., 336 U.S. 511.) A worker receiving the same injury ashore would be entitled to receive temporary compensation payments from the day he was injured until he had achieved maximum recovery and would then receive a substantial permanent disability award, the amount of such award depending upon the law of the state in which the particular injury occurs. Such benefits are not available to seamen.

Only where the injuries sustained by a seaman can be attributed to negligence or unseaworthiness does the seaman have an advantage over shoreside workers. In the great majority of cases, an injured seaman is at a distinct disadvantage.

CONCLUSION.

In the case at bar, the seaman was injured while on authorized shore leave and while under articles of employment with Matson Navigation Company. While he was not obligated to return to the ship until the following morning, Lawler, under his articles of employment, was subject to earlier recall to the ship if need arose and he could be located. While it is true that San Francisco happened to be the place of Lawler's legal residence, this fortuitous circumstance cannot alter the fact that at the time he sustained his injuries Lawler was in the service of and subject to the call of his ship under the doctrine of the *Aguilar, Warren* and *Farrell* cases (supra).

It is respectfully submitted that the Petition of Matson Navigation Company for a Writ of Certiorari herein should be denied.

Dated, San Francisco, California,
April 4, 1955.

Respectfully submitted,
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